



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

57165

Issued by the Department of Transportation on June 9, 1999

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**NOTICE OF ACTION TAKEN -- DOCKETS OST 98-3622 & 99-5713'**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of AMERICAN AIRLINES, INC., filed 3/3/99, in Docket OST-98-3622 to:

**XX** Renew exemption under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between Los Angeles and San Francisco, California, on the one hand, and Beijing and Shanghai, China, on the other. American states that it will use this authority to operate service under a code-share arrangement with China Eastern Airlines Corporation Limited on flights operated by China Eastern. American seeks renewal of the authority for an indefinite duration.'**

Northwest Airlines, Inc. and United Air Lines, Inc. filed separate answers supporting renewal of American's exemption authority. Northwest notes that questions have been raised concerning exclusivity provisions in code-share arrangements and that the agreement between American and China Eastern contains such a provision. Northwest states that, except in unusual circumstances, exclusivity provisions in international code-share agreements are in the public interest and should be permitted and, thus, Northwest maintains that the Department should grant American's application for renewal of exemption authority permitting its code-share arrangement with China Eastern. United also supports American's renewal and urges that the renewal be unconditioned with respect to exclusivity.

American filed a reply, stating that the Department should provide clear guidance on the issue of exclusivity. American states that the Department's policy should be applied to all code-share arrangements, including ones that have previously been approved, and not simply to new arrangements presented after the Department adopts such a policy.

In addition, by letter dated April 8, 1999, Northwest and United submitted a joint letter in this docket on the issue of exclusivity.

Application of AMERICAN AIRLINES, INC., filed 5/20/99, in Docket OST-99-5713 to:

**XX** Amend May 8, 1998 Statement of Authorization (Undocketed) under 14 CFR Part 2 12 to:

**Display China Eastern's "MU" designator code on American's domestic flights beyond China Eastern's Los Angeles gateway to Boston and Miami for the carriage of China Eastern's China-U.S. traffic.**

The Massachusetts Port Authority filed an answer in support of the amendment. United Air Lines filed an answer urging that American's application be granted notwithstanding the issue of exclusivity.

Applicant rep: Carl B. Nelson, Jr. (202) 496-5647 DOT Analyst: Linda Senese (202) 366-2367

**DISPOSITION**

**XX** *Granted exemption, in part. (see remarks below)*

**XX** *Balance Dismissed (Request of longer-term exemption authority see below).*

**XX** *Amended American's May 8, 1998, Statement of Authorization, both as requested and sua sponte (see remarks below)*

**XX** *Amended, sua sponte, China Eastern's May 8, 1998, Statement of Authorization (Undocketed) (see remarks below)*

The above action regarding the American's exemption renewal was effective when taken: June 9, 1999 through June 9, 2001,  
(See next page)

<sup>1</sup> Under the terms of its original award of authority, American's authority expired May 8, 1999. American filed a timely application for renewal, and its authority continues in effect under the provisions of 5 U.S.C. §558(c), pending final action by the Department on its renewal application.

The above action taken with respect to amendment of the May 8, 1998 statements of authorization was effective when taken: **June 9, 1999**, and will remain in effect indefinitely, as described below.

**Action taken by: Paul L. Gretch, Director**  
**Office of International Aviation**

**XX** Authority granted is consistent with the Air Transport Agreement between the United States and the Government of the People's Republic of China.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX** Standard Exemption Conditions (attached) (American)  
**XX** Holder's Certificate of Public Convenience and Necessity (American)  
**XX** Holder's Foreign Air Carrier Permit (China Eastern)  
**XX** May 8, 1998, Statements of Authorization approving the American/China Eastern code-share operations, and the conditions therein, as modified by this notice (see remarks below)

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**Remarks:** American's exemption authority is limited to operations conducted under a code-share arrangement with China Eastern.

Consistent with the Department's findings in Order 99-5-2, we have amended our previous May 8, 1998, Statements of Authorization, approving the American/China Eastern code-share operations to add the following condition:

**(e) The authority granted here is specifically conditioned so that neither American Airlines, Inc. nor China Eastern Airlines Corporation Limited shall give any force or effect to any exclusivity provision in their code-share agreement (Article 14 of the Codeshare Agreement dated December 17, 1997).**

In Order 99-5-2, the Department stated that in non-Open-Skies situations we are inclined to be much less tolerant of any exclusivity provision in a code-share agreement. We went on to point out that the U.S.-China Agreement is not Open Skies. Thus, absent countervailing circumstances to rebut our general inclination, we would not be disposed to permit exclusivity. We see no such countervailing circumstances here.<sup>2</sup>

We addressed the exclusivity issues raised by Northwest and United in Order 99-5-2.

**Dismissal:** Consistent with our standard practice for this type of application, we granted American exemption authority for a period of two years, and dismissed its request for longer-term authority.

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On the basis of data officially noticeable under rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

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<sup>2</sup> As American is not a carrier designated to serve China and is not associated with the Northwest/Air China arrangement, the limited exception we made in Order 99-5-2 (and in subsequent related decisions) to our general preclusion of exclusivity is not applicable in this case.

## Appendix A

### U.S. Carrier Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversaies contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 24.1;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.